

**Structural Pest Control Commission  
9535 E. Doubletree Ranch Road  
Scottsdale, AZ 85258**

**COMMISSION MEETING  
FRIDAY, April 14, 2006, 9:00 A.M.  
MINUTES**

**I. Call to order, Commissioner roll call**

**Commissioners Present:** Commissioners Paul Baker, Patrick Black, Dave Burns, Dan DeVere, and Bert Putterman

**Commissioners Absent:** Debbie Runbeck and one Vacancy

**Staff Present:** Eric Bauer, Vince Craig, Mike Francis, Lisa Gervase, Robert Tolton, and Assistant Attorney General M. Elizabeth (Lisa) Miles

**★Acknowledgment of Jack Peterson’s service on the Arizona Structural Pest Control Commission as a Public Member and immediate past Chairperson.**

*Commissioner Baker acknowledged Mr. Peterson’s service as a Commissioner from 2002-2005, including being the Chairperson for 2004-2005. Currently, Mr. Peterson is the Associate Director for the Department of Agriculture Environmental Services division. He was honored by the Environmental Protection Agency (“EPA”) on Earth Day 2005. For 12 years, he has also been a member of the Association of Feed Control Officials and the Association of Structural Pest Control Regulatory Officials, serving as the current president there. Before moving to Arizona in 1994, Mr. Peterson lived in North Dakota. He is married with two children. In January, 2006, he completed the Rock ‘n’ Roll marathon in Phoenix in a time of 3 hours, 56 minutes. Commissioner Baker presented Mr. Peterson with a plaque signed by Chairperson Debbie Runbeck and Governor Napolitano in recognition of his dedication and commitment for one plus term as a public member. Mr. Peterson stated that it was an honor to work on the Commission, and he appreciates the large amount of work it takes to be prepared for the monthly meetings. He stated that Lisa Gervase and the rest of the Commission staff are awesome and that there was much improvement in the three years that he served on the Commission.*

**★Welcome return of Bert Putterman to the Arizona Structural Pest Control Commission as an Industry Member, Large Company.**

*Bert Putterman rejoins the Commission, replacing Commissioner Hartley as an industry member representative of a large company.*

**II. Call to the public**

*Mike Lowe, from Lowe & Childers, representing Nisus Corporation, stated that on March 14, they filed with the Commission a Petition to Make Final Rule. On April 7 they reviewed documents at the SPCC office. They received a letter from Lisa Gervase indicating that they would be placed on the May 12 Commission meeting agenda. He stated that he is concerned about the rule-making procedures being followed here. If you look at the Commission's statutory duties and authority, promulgating rules is something that can't be delegated to staff. Nisus's Boracare product has been registered for use in all 50 states, approved by the Environmental Protection Agency ("EPA") and the Arizona Department of Agriculture, recognized by the International Residential Code, FHA and HUD. However, the Commission in Arizona does not recognize the product. He stated that during recent years, they have provided input about this product. The Commission's rule-making docket was adopted in July, 2005. On March 31, after they filed the Petition to Make Final Rule, they got from Commission staff a draft of a Commission rule that does not address discrimination against their product. He stated that the Commission can't delegate this duty to staff and can't push off reviewing their petition. He stated that they would like 30 minutes at the May Commission meeting for a presentation from Nisus regarding why it is important to recognize their product equally with the soil-based products. He stated that they have concern when staff picks a subcommittee to finalize the rule, and he also has concern about comments made by members of the subcommittee who are competitors. He encouraged the Commission to not be influenced by individuals who have an economic interest against Boracare and who don't consider the public interest and health and safety considerations. He stated that Lisa Gervase has been very professional in his dealings with her and he doesn't want to beat up on staff. But the Commission needs to give Nisus a full presentation and within the next 60 days rule on the petition. Any opponents can voice their opinions there if they want. He stated that he simply asks that the Commission's attention be brought to this issue so that it can rule on whether Nisus's proposed regulation should be adopted.*

*Scott Richardson stated that there is a bubbling insurance crisis for the pest control industry. Some months ago there was a new form promulgated by the Commission, though he doesn't see that it was ever voted on for approval by the Commissioners. It is a form that is meant to show evidence of insurance as required under statute.*

*He stated that he believes that previously something called an Accord Certificate was being used. The new form asks for different information. He stated that he recently received an email from Curtis Anderson, the underwriting manager for Risk Placement Services, who writes surplus lines coverage because there is not a very wide market for pest control insurance in the first place. He stated Mr. Anderson stated that the companies he writes for are going to not renew their insured because they won't fill out the form. According to Mr. Anderson, the form is supposed to "confirm coverage, not create coverage".*

### **III. Communication with Commissioners**

*Bert Putterman stated that he was contacted by representatives of Nisus Corporation who said that they were shipping off a product information package to the Commission and that they were interested in the rules process.*

*Commissioner Baker stated that he had a conversation with Gloria Kilian about the testing process, and he directed her to staff.*

### **IV. Summary of Current Commission Events, Activities, Notices**

☞ *Status of Proposed Law and Rule Changes. Also, watch web [www.azleg.state.az.us](http://www.azleg.state.az.us) and [www.sb.state.az.us](http://www.sb.state.az.us)*

*Lisa Gervase stated that, regarding proposed law changes, SB 1388, the utility license exemption bill, was sent to the Governor's office on April 4. SB 1350, the child care facility pre/post notification bill, should be on the House of Representatives floor for a vote soon. SB 1221, the weed control license exemption bill, was on the House of Representatives floor in early April. Commissioner Burns commented that regarding SB 1350, the lady who made a presentation to the Commission in February provided some false information. He stated that she said that by law, a residential child care facility had to post at the front door some notice that it is such a business. However, in reality all they have to do is provide the notice to the parents. He stated that he sees a potential problem for a pest control company that services a whole house only to find out at the end that a play room in the house is actually a child care room. This happens a lot.*

*Lisa Gervase stated that, regarding proposed rules changes, staff was trying to arrange all of the proposed rules changes in one package, but at the February 1, 2006 stakeholder meeting, people were there for different reasons, as Commissioner Burns can attest, and it didn't make a whole lot of sense for people who were present for a few items to have to sit through discussion about items that do not interest them. So, per the Commission's direction at the February 10, 2006 Commission meeting to break the rules package into smaller packages and smaller*

*work groups for discussion, staff separated the proposed rules changes into three separate packages and established work groups to discuss each one. The Commission is the sole entity that will be deciding what to adopt and what not to adopt. The termite treatment rules package (including current rules from Article 4 and rules about WDIIIRs) and a stack of related documents have been sent to the members of that work group. There have been at least two stakeholder meetings, but now there will be more directed meetings for each of the three groups. The first discussion meeting for the termite treatment rules will be next Wednesday, April 19. The administrative, general, operational rules package (which covers everyday operations, the licensing process, hearing procedures, etc.) should be sent to the members of that work group soon to hold its first discussion meeting. The third package, containing new rules of minimum standards for supervising business licensees, qualifying parties and applicators, has yet to be drafted. The reason that this package is being drafted is because of the legislative change that occurred in the 2005 session. A couple of legislators and a handful of industry members wanted these rules all in one spot. This group of rules will be something that the Commission has never had before.*

✓Applicator License Renewal status - Renew Online Now [www.sb.state.az.us](http://www.sb.state.az.us)

*Lisa Gervase stated that there are approximately 7,000 licensed applicators, and over 1,000 of them have renewed their licenses online so far. At this time last year, only 80-90 had renewed online. Staff will mail out paper renewal forms at the end of this month to those licensees who have not renewed their licenses online.*

⇒CEU (Continuing Education Units) and ILT (Initial Licensure Training) courses posted on web site. Registration: 480-CEU-SPCC; [CEU@sb.state.az.us](mailto:CEU@sb.state.az.us); 480-ILT-SPCC; [ILT@sb.state.az.us](mailto:ILT@sb.state.az.us)

*Lisa Gervase stated that the recent CEU classes have been well-received and well-attended. In fact, for the first time, staff had to turn people away at last Friday's course. There have been huge responses and great comments made about the courses, primarily directed towards Mike Francis and Vince Craig, who have done the bulk of the presentations.*

*Commissioner Baker asked about the status of the unfilled public Commissioner position. Lisa Gervase stated that she hasn't yet heard anything from the Governor's office.*

*Commissioner Putterman asked to be notified of the three rules work group meetings.*



**VOTE:** 4-0 *Motion carried (Commissioner Putterman recused).*

7. **Young, Jerry Neal** **Buggerbees (Activating Qualifying Party for new business license in "B1" General Pest & Public Health)**

**B. Applications to activate Qualifying Party for Existing Business License**

1. **Pisano, Jr.; Napoleon** **Lawn Doctor of Mesa (Activating Qualifying Party for existing business license in "B5" Turf & Ornamental Horticulture)**

2. **Kirkey, Richard J.** **Nu-Treat Pest Services, LLC. (Activating Qualifying Party for existing business license in "B1" General Pest & Public Health)**

3. **Gonzalez, Joseph J.** **Urban Forest Tree Care, Inc. (Activating Qualifying Party for existing business license in "B3" Right of Way & Weed Control & "B5" Turf & Ornamental Horticulture)**

4. **Pierce, Roger A.** **Uni-Tech (Activating Qualifying Party for existing business license in "B1" General Pest & Public Health)**

5. **Buechle, Karen S.** **District Pest Control (Activating Qualifying Party for existing business license in "B1" General Pest & Public Health)**

6. **Cozzens, Dustin T.** **Origin Horticultural Services, LLC. (Activating Qualifying Party for existing business license in "B3" Right of Way & Weed Control & "B5" Turf & Ornamental Horticulture)**



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|-----------------------------|--|
| 12. Gile, Barbara B.        | “B3” (Right of Way & Weed Control) and “B5” (Turf & Ornamental Horticulture)           |
| 13. Pierce, Jr.; Jesse R.L. | “B1” (General Pest & Public Health)  |
| 14. Fulmer, James E.        | “B9” (Aquatic Pest Control)  |
| 15. Abril, Victor N.        | “B3” (Right of Way & Weed Control)   |
| 16. Schexneider, Steven P.  | “B8” (Wood-Destroying Insect Inspection)   |
| 17. Glantz, Michael E.      | “B3” (Right of Way & Weed Control) and “B5” (Turf & Ornamental Horticulture)           |
| 18. Blamires, Travis J.     | “B3” (Right of Way & Weed Control) and “B5” (Turf & Ornamental Horticulture)           |
| 19. Jasones, Michael C.     | “B1” (General Pest & Public Health)  |
| 20. Gable, Zackary C.       | “B3” (Right of Way & Weed Control)   |
| 21. Robbins, Michael J.     | “B1” (General Pest & Public Health)  |
| 22. Wiles, Christopher L.   | “B2” (Control of Wood-Destroying Insects) and “B8” (Wood-Destroying Insect Inspection) |
| 23. Koehler, Matthew        | “B3” (Right of Way & Weed Control) and “B5” (Turf & Ornamental Horticulture)           |
| 24. Colvin, David L.        | “B7” (Fungi Inspection)  |
| 25. Salcido, Jenifer R.     | “B8” (Wood-Destroying Insect Inspection)   |

**D. Business License Name Change Requests**

1. Desert Links to Turfscience, Inc.
2. Naturezone of Arizona, LLC. to Naturezone Pest Control, LLC.
3. Beebe's Pest Control to Beebe's LLC.
4. Ancala Country Club to American Golf Corporation
5. Termico Solutions, LLC. to Homelife Pest & Termite Solutions, LLC.
6. Pratte Building Systems, LLC. to Pulte

**End of Consent Agenda**

**MOTION:** *By Commissioner Black to accept Consent Agenda with the exception of the item pulled for discussion (A6, C1). Seconded by Commissioner DeVere.*

**VOTE:** 5-0 *Motion carried.*

**VI. Applications not on Consent Agenda**

**A. Request for Temporary Qualifying Party License Renewals**

1. Gibson, Michael E. "B3" (Right of Way & Weed Control) and "B5" (Turf & Ornamental Horticulture)

*Mr. Gibson appeared.*

*Mr. Gibson stated that he was on a previous meeting's consent agenda to take the licensing exam. He stated that he is currently operating under Agave Environmental Contracting, Inc. Commissioner Burns asked if this is Mr. Gibson's first extension request. Mr. Gibson stated that it is.*

**MOTION:** *To approve a 60-day temporary QP renewal by Commissioner Black. Seconded by Commissioner DeVere.*

**VOTE:** 5-0 *Motion carried.*

**2. Buechle, Karen S.**

**“B2” (Control of Wood-Destroying Insects)**

*Ms. Buechle appeared.*

*Scott Richardson, attorney, appeared.*

*Scott Richardson stated that Ms. Buechle has passed some but not all of the QP exams. He stated that her husband passed away in the fall and, as a sole proprietorship, his business license simultaneously evaporated. Ms. Buechle got a new business license and found a regular (non-temporary) qualifying party who ran the business until they decided to part. She then decided, having an applicator license in three categories, to get her own QP license. She has passed the exams in the “Core” and “B1” categories. This has been a difficult time for Ms. Buechle and her family. She has directed her attention to her family, running her business, and being a temporary QP. He stated that he knows how the Commission feels about temporary QP extensions, but he remarked that Ms. Buechle has been making a concerted effort. If she is denied a temporary QP renewal and she can’t do termite work, she would then have to do business as a branch of another company, which would confuse her customers, who, sad as it is to say, have already been solicited for business by some of her competitors. Also, Ms. Buechle has no legal obligation to satisfy the warranties from her husband’s business, but she has done so anyway because she feels a moral obligation to do so.*

**MOTION:** *To approve a 60-day temporary QP renewal by Commissioner Putterman.  
Seconded by Commissioner Black.*

**VOTE:** *5-0 Motion carried.*

**B. Applications to activate Qualifying Party for New or Existing Business License**

*None.*

**C. Applications for Qualifying Party License**

*None.*

**VII. Complaints**

**A. Burns Pest Elimination (BL)/David Burns (QP)/James Speer (Unlicensed Applicator) - Case # 2005-033**

*Scott Richardson, representing the business licensee and QP, appeared.*

*Scott Richardson stated that he and the business licensee and QP have no objection to staff's recommendation.*

**MOTION:** *To accept staff's recommendation to dismiss the complaint against the business licensee and QP, by Commissioner Putterman.  
Seconded by Commissioner DeVere.*

**VOTE:** *4-0 Motion carried (Commissioner Burns recused).*

**MOTION:** *To accept staff's recommendation to suspend the applicator license of James Speer due to non-payment of renewal fees (with automatic revocation one year later) and to dismiss without prejudice the complaint against James Speer, by Commissioner Putterman.  
Seconded by Commissioner DeVere.*

**VOTE:** *4-0 Motion carried (Commissioner Burns recused).*

**B. Charles Stout, Jr. (APP) - Case # 2005-074**

*Mr. Stout appeared.*

**MOTION:** *To accept proposed resolution and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings, by Commissioner DeVere.  
Seconded by Commissioner Black.*

**VOTE:** *5-0 Motion carried.*

**C. Neat Control Company (BL)/Phillip Douglas (QP) - Case # 2005-078**

*Commissioner Black noted that Mr. Douglas stated that he didn't know that he needed an applicator license to apply pesticides, though he signed a Consent Agreement in a previous case saying that he understood that he needed an applicator license to do so. Is that the reason that the fine is \$1,200 in this case? Vince Craig stated that the fine is consistent with other cases against QPs who don't maintain an applicator license. Staff looked at it strictly from the standpoint of the law, not as being a threat to the public. Commissioner Black asked, however, if Mr. Douglas is indeed a threat to the public. Vince Craig stated that most QPs would say, regardless of whether they maintain an applicator license, that they know how to be an applicator, perhaps even better than an applicator does because they supervise other applicators. Commissioner Black asked how long Mr. Douglas has been in the industry. Commissioner Putterman stated that he has been a licensee for a long time. Mike Francis stated that it has probably been since the 1980s. Commissioner Putterman stated that over the years, certain QPs have acted in varying degrees of defiance regarding whether to keep their applicator license current when they already have an active QP license. Commissioner Burns asked why the fine is being split up into \$400 payments. Vince Craig stated that Mr. Douglas said that a large civil penalty payable in full all at once would create a financial hardship. Commissioner Black asked what will happen if Mr. Douglas doesn't make his first payment. Would the whole fine become immediately due and payable? Vince Craig stated that it would not, but staff would send a letter to him saying that he is defaulting on his agreement and the case would then go to the Office of Administrative Hearings ("OAH"). Commissioner Burns asked, if he fails on the payment plan, whether the case will come back before the Commission. Lisa Miles stated that if he fails to pay, a new case would be established, and that case could be sent to OAH, unless, however, the Commission negotiates a Consent Agreement that provides that his license will be suspended if he doesn't pay, but he would have to agree such a provision.*

**MOTION:** *To accept proposed resolution and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings, by Commissioner Putterman.  
Seconded by Commissioner DeVere.*

**VOTE:** *5-0 Motion carried.*

*Commissioner Baker asked if some consequential language could be put into some of these Consent Agreements that include payment plans so that there are*

repercussions if someone doesn't pay their fine. Vince Craig stated the next case on the agenda, Ant Brian Exterminating, is an example of such a case. Commissioner Baker asked if the Commission could make certain standards to be consistently applied to such cases. He suggested that staff could require the licensees to pay their fines by cashier's check or money order. Commissioner Black concurred with this idea. Lisa Miles stated, however, that this could apply to all civil penalties, not just those with payment plans. Staff perhaps can incorporate some of that in future settlement agreements. Lisa Gervase stated that the Consent Agreement transmittal letters ask that payment be made with certified funds; but the Commission has not had language about automatic suspension and/or revocation for not paying a civil penalty and usually only does this for unpaid TARF fee cases because these are fees that should have already been paid, whereas civil penalties impose payable fines that would not occur without a Commission order. Commissioner Baker asked if staff has had problems with insufficient funds. Lisa Gervase stated that it has happened only a couple of times and is not really a problem. Commissioner Burns stated that he is not a proponent of having everyone pay by cashier's check; most of the industry writes fine checks, and we shouldn't punish the whole industry by making all of them go to this trouble. Lisa Gervase stated that only a select few licensees are on a cash, money order or cashier's check basis.

**D. Ant Brian Exterminating (BL)/Brian Oldham (QP) - Case # 2005-075**

Lisa Gervase stated that this is a cashier's check case. Commissioner Putterman asked if Ant Brian Exterminating is currently insured. Vince Craig stated that he contacted the insurance company yesterday and was told that Ant Brian is insured, but he also noted that Mr. Oldham paid by check. Commissioner Putterman asked what the mechanism within Commission is that assures that businesses remain insured. Vince Craig stated that the Commission currently really hasn't had an issue with that. Ant Brian's insurance carriers have contacted the Commission when a check bounces or the policy isn't renewed. Commissioner Putterman asked if the Commission automatically sends a Cease and Desist Order when insurance lapses. Lisa Gervase stated that thirty days before expiration, staff sends a notice saying that the licensee needs to renew its insurance. License suspension is automatic by law if a licensee does not have insurance. Commissioner Putterman asked what happens if a business that does not have insurance continues to operate in the interim and does pretreatments, etc. What is the status of the warranties? Lisa Gervase stated that a complaint would be filed for operating on a suspended license. Mike Francis added that, regarding the warranties, a business without insurance still has a valid license; the license is just suspended. Lisa Gervase added that the Commission doesn't have the legal authority to send a Cease and Desist Order in this case.

**MOTION:** *To accept proposed resolution and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings, by Commissioner Putterman.  
Seconded by Commissioner Black.*

**VOTE:** 5-0 *Motion carried.*

**E. Tacit Services, LLC (BL), John McClure (QP), John Geiss (APP), Ryan Gielow (APP) - Case # 2005-020**

*Mr. Gielow appeared.*

**MOTION:** *To accept proposed resolution and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings, by Commissioner Burns.  
Seconded by Commissioner DeVere.*

**VOTE:** 5-0 *Motion carried.*

**F. Sexton Exterminating (BL)/Rick Sexton (QP/APP) - Case # 2005-072**

*Commissioner Baker asked if one of the reasons that the application was less than agreed upon was because of compaction of the soil. Vince Craig stated that the compaction essentially was removed. The violation primarily deals with the square footage. During the initial investigation, staff believed that there was a shortage regarding the depth of foot. After discussing with the builder, staff dropped the depth of foot issue. But Mr. Sexton didn't apply the correct amount for square footage based on his own writing. Commissioner Baker asked if Mr. Sexton extended the warranty for the homeowner. Vince Craig stated that he did not.*

**MOTION:** *To accept proposed resolution and if the Consent Agreement is not executed by the deadline stated in the Consent Agreement transmittal letter to send the case to the Office of Administrative Hearings, by Commissioner DeVere.  
Seconded by Commissioner Putterman.*

**VOTE:** 5-0 *Motion carried.*

**VIII. Requests for Review or Rehearing of Previous Commission Decisions.**

*None.*

**IX. Review or Rehearing of Previous Commission Decisions.**

*None.*

**X. Consideration of Suspension of Business, Qualifying Party and/or Applicator Licenses for Non-payment of Civil Penalties and/or Nonpayment of Renewal Fees [Possible Dismissal of Cases without prejudice, if applicable].**

**A. Burghard G. Winter, Qualifying Party License and Applicator License, Case No. 1996-010 - Commission's consideration of Suspension of Burghard G. Winter's Qualifying Party License and Applicator License for nonpayment of civil penalties.**

*Lisa Gervase stated that the Commission had issued an order in 1998 imposing a civil penalty, and the civil penalty has not been paid. Staff has sent letters and made phone calls to Mr. Winter and is now recommending suspension of his QP and applicator licenses, with automatic revocation in a year. Mr. Winter had made a verbal agreement to pay the civil penalty in two installments, but he has not paid. He said that he had sold the company and the person to whom he sold the company was supposed to take care of the civil penalties. Even if that was the case and they had that contract, the obligation to pay the Commission still ultimately lies with Mr. Winter, who was notified of today's meeting. This case will also be sent to the Attorney General's office for collections. Commissioner Putterman asked if Mr. Winter is currently qualifying a company. Lisa Gervase stated that he is qualifying his own company, Winter Brothers. The Commission also had a complaint against his company in the last 6 months for an improper application at the Department of Agriculture building. Commissioner Putterman asked if it would be appropriate to send a Cease and Desist Order. Lisa Gervase stated that the Commission has no legal authority to do that, as Mr. Winter still has licenses; the licenses are just suspended. This case is different from a pure unlicensed activity case. Lisa Miles added that the Commission does not have authority to issue a Cease and Desist Order to someone who is licensed by the Commission. Lisa Gervase stated that if the Commission suspends his licenses and does have evidence that he operated on a suspended license, then staff would open a new complaint. Commissioner Black asked if suspension is the legal recourse before revocation. Lisa Miles stated that the provision in the law is to allow the Commission to suspend a license for failure to pay civil penalties and then automatically revoke the license a year later. If the Commission doesn't take that track, then staff would open a separate*

complaint and send it to OAH, where the Commission would ask for a suspension or revocation. Commissioner Black asked if the case could be done and a revocation order issued in as little as three months if they choose to send it to OAH. Lisa Miles stated that appeal time also would be added and he could get a stay, which would add more time. Plus, Mr. Winter could legally operate in the meantime.

**MOTION:** To suspend the QP license and applicator license for nonpayment of civil penalties in Case No. 96-010, by Commissioner Black.  
Seconded by Commissioner DeVere.

**VOTE:** 5-0 Motion carried.

**B. Robert Ryan, Applicator Licensee, Case No. 2005-006 - Commission's Consideration of Suspension of Robert Ryan's Applicator License for nonpayment of civil penalties.**

Lisa Gervase stated that this case is similar to Mr. Winter's case, above, but it is more recent (2005) and involves an unpaid \$100 civil penalty. Commissioner Burns asked if Mr. Ryan is out of the industry. Lisa Gervase stated that she doesn't know. His license expires on May 31 if not renewed. Commissioner DeVere asked, if the Commission suspends Mr. Ryan's applicator license, whether the suspension would be lifted if he pays the \$100 fine. Lisa Gervase stated that the suspension would be immediately lifted. Commissioner Putterman stated that it is unfortunate that the Commission can't increase the fine that was levied so as to discourage people from waiting to pay until they are forced to pay or risk suspension. Lisa Gervase stated that the Commission has the option to open another complaint, but then it would be chasing two civil penalties.

**MOTION:** To suspend the applicator license for nonpayment of civil penalties in Case No. 05-006, by Commissioner Burns.  
Seconded by Commissioner Black.

**VOTE:** 5-0 Motion carried.

(Break from 10:25 A.M. to 10:35 A.M.)

**XI. Consideration of lifting Suspension of Business, Qualifying Party and/or Applicator Licenses.**

None.

**XII. Recommended Decisions and Orders of the Office of Administrative Hearings' Administrative Law Judges.**

**A. Black Sheep LLC dba Ant Brian's Exterminating Company, Business License No. 5531 - OAH Case # 2004A-009-SPC/SPCC Case # 2004-009**

*Lisa Miles, Assistant Attorney General for the State of Arizona, representing the Structural Pest Control Commission, appeared.*

*Lisa Miles encouraged the Commission to accept the Findings of Fact, Conclusions of Law and Recommended Order revoking the business license and requiring payment of TARF fees. Commissioner Putterman asked, if the Commission revokes the business license, whether there is a clause in statute that prohibits the ability to reapply for a license for 5 years. Lisa Gervase stated that that law doesn't apply here because the license here is owned by an LLC. Mr. Oldham now has a different license. Commissioner Putterman asked if the revocation would just apply to the LLC and not the members. Lisa Gervase stated that that is her understanding, because it is a revocation against an entity. Commissioner Putterman asked who is responsible for the \$192 of TARF fees. Lisa Gervase stated that the LLC is responsible, and if the fees are not paid, then the case will go to collections, or, if somehow justified, they can pierce the corporate veil and go after the individual members.*

**MOTION:** *To accept the ALJ's Findings of Fact and Conclusions of Law, by Commissioner Black.  
Seconded by Commissioner Putterman.*

**VOTE:** *5-0 Motion carried.*

**MOTION:** *To adopt the ALJ's Recommended Order, by Commissioner Black.  
Seconded by Commissioner Burns.*

**VOTE:** *5-0 Motion carried.*

**XIII. Settlement Proposals [not part of Complaints agenda item].**

*None.*

**XIV. Consideration of Informal Settlement Conference proposed resolutions [for License Denial Applicants].**

*None.*

**XV. Reporting by Licensees on Probation.**

- A. Benjamin Sanchez, Applicator Licensee No. 050236 B1 B3 - Case No. 2005-007.** Mr. Sanchez reports the status of his compliance with criminal probation, employment status and rehabilitation status. Mr. Sanchez was granted a license pursuant to a consent agreement in February 2005.

*Mr. Sanchez appeared.*

*Lisa Gervase stated that a Consent Agreement was entered in February, 2005. Mr. Sanchez has been compliant with the terms of the Order, including making quarterly appearances before the Commission. Mr. Sanchez continues to work for Pima County. The Commission received a glowing letter from his supervisor. Lisa Gervase asked that the Commission consider stepping down the frequency of Mr. Sanchez's required appearances before the Commission to once every six months instead of once every three months.*

**MOTION:** *To offer an amended consent agreement to step down the frequency of Mr. Sanchez's required appearances before the Commission from once every three months to once every six months, by Commissioner Burns. Seconded by Commissioner Putterman.*

**VOTE:** 5-0 *Motion carried.*

**XVI. Applicants with Criminal Convictions.**

- A. LaVarnia, Kansas E.**

**MOTION:** *To deny based on conviction of a felony, which demonstrates lack of moral character, by Commissioner Burns. Seconded by Commissioner Putterman.*

**VOTE:** 5-0 *Motion carried.*

**B. Tafoya, Che' Christo**

*Mr. Tafoya appeared.*

*Dennis Roehl, from Termico Solutions, LLC, now known as Homelife Pest & Termite Solutions, LLC, appeared.*

*Ed Szymanski, QP for Homelife Pest & Termite Solutions, LLC, appeared.*

*Mr. Roehl stated that Mr. Tafoya has worked for him for approximately one year. Mr. Szymanski clarified that Mr. Tafoya has worked in another part of their business that is not in pest control. Mr. Roehl stated that customers love him, he shows up on time, and does what he says he is going to do. He adds value to their business and would be exceptional for their company. Commissioner DeVere noted that Mr. Tafoya's conviction dates back to 1989.*

**MOTION:** *To approve by Commissioner Burns.  
Seconded by Commissioner Black.*

**VOTE:** *5-0 Motion carried.*

**C. Harmison, David M.**

*Mr. Harmison appeared.*

*Todd Martin, QP for Bulwark Exterminating, LLC, appeared.*

*Mr. Martin stated that Mr. Harmison has worked for him for about four months and has shown himself to be on time and one of the top performers.*

**MOTION:** *To approve by Commissioner Black.  
Seconded by Commissioner Burns.*

**VOTE:** *5-0 Motion carried.*

**D. Johnson, Ryan L.**

*Mr. Johnson appeared.*

*Tina Boutin, supervisor from Conn Pest Control, LLC, appeared.*

*Ms. Boutin stated that Mr. Johnson has worked for them for about four months, is an excellent technician, and has had good responses from their clients. Commissioner Burns asked when Mr. Johnson's date of birth was. Mr. Johnson stated February 9, 1973. Commissioner Black noted that Mr. Johnson's felonies occurred around 1995-1996 with nothing in the past 10 years. Mr. Johnson stated*

that he was in his early 20s and became mixed up with some bad friends and made some bad decisions. Mr. Johnson stated that he and his fiancé moved out here last year for her to take a job as an attorney. He stated that he did some construction for a temp agency. Commissioner Burns stated that he really struggles with the classification of this offense. Commissioner Burns asked how old Mr. Johnson was at the time. Mr. Johnson stated that he was 21 years old. Ms. Boutin stated that she doesn't feel at all threatened by Mr. Johnson in any way. Commissioner Black stated that, in looking at the particulars of this case, he doesn't think that Mr. Johnson poses a threat to the public.

**MOTION:** To approve by Commissioner Black.  
Seconded by Commissioner DeVere.

**VOTE:** 5-0 Motion carried.

## **XVII. Commission Updates and Reports; Miscellaneous Action Items.**

- A. Eastern Arizona Exterminating (BL)/Joseph R. Goodman (QP & APP)  
- Case No. 99-023.** For consideration to close complaint.

**MOTION:** To close the complaint by Commissioner Putterman.  
Seconded by Commissioner Black.

**VOTE:** 5-0 Motion carried.

**B. None.**

**C. None.**

### **D. Complaint Status Log**

*Mike Francis stated that this is now down to two pages instead of three to four, so it's getting better.*

### **E. Computer Based Testing "CBT" Status and Statistics**

### **F. Expenditure Report - separate handout**

**G. None.**

**H. Gloria Kilian, dba Kilian's Termite and Pest Control, Co., vs. Structural Pest Control Commission, Case No. C20053438**

*Lisa Gervase stated that on March 13, the Court of Appeals dismissed Ms. Kilian's appeal, so the lawsuit has ended. Sometime in mid-March, Ms. Kilian began testing for her QP license, but her application just closed, so she will have to apply again.*

*(Break from 11:25 A.M. to 11:35 A.M.)*

**I. Commission training session**

*Lisa Miles, Assistant Attorney General for the State of Arizona, appeared.*

*Lisa Miles commended the Commissioners for their overall level of preparedness for the Commission meetings. She then spoke about tips for being a good Commissioner, including what to do and not to do.*

*First, Commissioners should not participate in discussion or vote on an agenda item or case when there is a statutory conflict of interest. The standard here is pretty far-reaching and includes many types of relatives and financial interests. She recommended using a "substantial interest" test and asking yourself whether you could have a lot to gain or lose directly or indirectly depending on the outcome of the item or case.*

*For items or cases not involving a statutory conflict of interest but involving some other type of conflict of interest, she recommended that the Commissioners tell her their questions before a discussion or vote takes place and ask themselves if they can be fair and objective. If you can be fair and objective, note the potential conflict on the record but also say that you can be impartial. It is more important to protect the decisions that the Commission makes than the individuals involved.*

*Commissioner Burns asked how they should handle cases regarding ex-employees. Lisa Miles stated that it depends on the situation and how much time has elapsed since the person has been their employee. A year or less is a good standard for demonstrating a possible conflict of interest. Commissioner Putterman stated that his company does subcontracting work for other companies. Lisa Miles stated that there is a financial interest relationship in these cases and so there would probably be a statutory conflict of interest.*

*Second, the Commissioners should remember that they are always on the record. Some innocuous comments can appear bad in black and white before an Administrative Law Judge ("ALJ"). For example, it may not be good to say to a*

*temporary QP renewal applicant: “Yeah, we’ll give it to you this time, but don’t come back.” Lisa Miles stated that she had to litigate over this issue. Or, regarding egregious complaints, it may not be good to say: “These people are crooks.” This comment makes it look like a Commissioner is pre-judging a case and the respondents can’t get a fair shake.*

*Third, the Commissioners should refrain from ex-parte communications. If an item or case is on the agenda, don’t have a discussion with anyone outside of the publicly-noticed Commission meeting. The Commissioners need to have their discussions and make their decisions at the meeting. Commissioner Black asked when the agenda is posted. Lisa Gervase stated that it is posted several days before the meeting. Lisa Miles stated that the Commissioners should direct people who contact them about agenda items or cases to talk to staff instead. The work should be done at the staff level and the decisions should be made by the Commissioners. Commissioner Putterman asked who controls the agenda. Lisa Miles stated that the Commission Chairperson and Executive Director control the agenda. Commissioner Putterman asked about the Nisus case today that was addressed at the Call to the Public. Lisa Gervase stated that the Nisus representative addressed the issue to her and she told him that a 30-minute discussion would be inappropriate but that it could be handled at the Call to the Public. Lisa Miles stated that we want to avoid situations where people pick out certain individual Commissioners as their champions for their causes.*

*Fourth, regarding the Open Meeting Law, Commissioners need to be careful about cyberspace meetings and “replying to all” in emails.*

*Fifth, regarding Executive Sessions, discussion can only be between the Assistant Attorney General, Lisa Miles, and the Commissioners. The Commissioners cannot talk to each other during Executive Sessions.*

*Sixth, most things that the Commissioners use in their job duties as Commissioners are public records.*

*Finally, Lisa Miles told the Commissioners that her role changes if a case goes to formal hearing. At that point, she cannot talk with them about a case because she represents the people of the State of Arizona.*

*After Lisa Miles finished the Commission training session, Mike Francis handed out copied of the former, current and proposed Enforcement Response Program (“ERP”) for the Commissioners to take and study, with discussion possibly to be set for a future Commission meeting agenda.*

## **XVIII. Approval of Minutes**

### **A. March 10, 2006 (regular session) Minutes**

**MOTION:** *To approve the March 10, 2006 Minutes by Commissioner Burns.  
Seconded by Commissioner Black.*

**VOTE:** 4-0 *Motion carried (Commissioner Putterman abstained).*

### **B. March 10, 2006 (executive session) Minutes - separate handout**

*Tabled.*

*Commissioner Burns stated that he felt more needs to be in the minutes. Lisa Miles asked that Commissioner Burns summarize in written form what he would like included, and forward to staff. The minutes can be tabled until next month's meeting. Commissioner Burns stated that he thinks there are 4-5 bullet points that should be reflected.*

### **C. Continuing Education Minutes**

**MOTION:** *To approve the Continuing Education Minutes by Commissioner Black.  
Seconded by Commissioner DeVere.*

**VOTE:** 4-0 *Motion carried (Commissioner Putterman abstained).*

## **XIX. Scheduling of future meetings/agenda items**

### **Current Proposed dates**

**May 12, 2006**

**June 9, 2006**

**July 14, 2006**

**August 11, 2006**

**September 8, 2006**

**October 13, 2006**

**November 9, 2006 (Thursday)**

**December 8, 2006**

**XX. Adjournment - 12:00 p.m.**

**MOTION:** *To adjourn by Commissioner Black.  
Seconded by Commissioner DeVere.*

**VOTE:** *5-0 Motion carried.*